



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 6208-99

3 February 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF EX-PVT [REDACTED], USMC,
[REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, the widow of a former enlisted member of the United States Marine Corps, applied to this Board requesting that her husband's naval record be corrected to show a more favorable type of discharge than the bad conduct discharge that was ordered executed on 23 October 1981.

2. The Board, consisting of Messrs. Morgan, Zsalman, and Rothlein reviewed Petitioner's allegations of error and injustice on 20 January 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Subject first enlisted in the Marine Corps on 19 July 1972 for four years at age 18. The record reflects that he was

then advanced to CPL (E-4). He was honorably discharged on 22 August 1974 for the purpose of immediate reenlistment, which he did on the following day for a period of five years. He was promoted to SGT (E-5) on 4 February 1975 and served without incident until 20 January 1977 when he was notified that the commanding officer (CO) was reporting that he fraudulently enlisted on 19 July 1972 by failing to disclose prior military service which included a special court-martial conviction, and a pre-service civil conviction record which resulted in imprisonment and a parole violation. However, the CO recommended retention given Subject's otherwise excellent military record and performance. The discharge authority authorized retention on 22 August 1977. Subject was promoted to SSGT (E-6) on 1 October 1977.

d. The record further reflects that Subject continued to serve without further incident until 28 February 1979 when he was formally counseled regarding his performance of duties, conduct of personal affairs, and his legal responsibility to liquidate a financial obligation.

e. On 17 December 1980, Subject was convicted by general court-martial of writing a bad check to the Marine Corps Exchange in the amount of \$1,694.22 and an unauthorized absence (UA) from 27 March 1979 to 10 October 1980. He was sentenced to confinement at hard labor for six months, forfeitures of \$300 per month for six months, reduction in rank to PVT (E-1), and a bad conduct discharge. On 6 February 1981, Subject requested restoration to duty in pay grade E-6, reduction in the confinement and forfeitures, and suspension of the bad conduct discharge. The CO of the correctional facility recommended clemency in the form of suspension of the confinement at hard labor. However, the Commandant of the Marine Corps recommended that clemency be denied and that he receive the punitive discharge adjudged upon completion of appellate review.

f. The record further reflects that on 10 March 1981 Subject was arrested by civil authorities and convicted of issuing a check with the intent to defraud. He was sentenced to 180 days confinement with 96 days suspended for four years.

g. The Navy-Marine Corps Court of Military Review affirmed the findings and the sentence of the general court-martial on 25 May 1981. Subject was reported in a UA status on 31 August 1981 and the bad conduct discharge was ordered executed on 23 October 1981. However, on 19 December 1981, before Subject

could be discharged, he died of acute carbon monoxide poisoning. His death was reported by message to the Commandant of the Marine Corps on 22 December 1981. It was noted that he had been in civil confinement for four months for passing bad checks and been declared a deserter. A DD Form 214 is not issued to individual who dies on active duty, and there is no evidence that a bad conduct discharge was issued to Subject.

h. Petitioner provides a letter from the Houston Regional Office, Department of Veterans Affairs (DVA), informing her that she was ineligible to receive nonservice-connected death pension benefits since Subject was not eligible for a complete separation because of his early discharge for immediate reenlistment.

i. Regulations of the DVA provide that even though no unconditional discharge was issued, a person is considered to have been unconditionally discharged or released from active military, if the individual served on active duty for the period of time the person was obligated to serve upon enlistment, the person was not discharged or released upon completing that enlistment due to an intervening enlistment or reenlistment, and the individual person would have been eligible for a discharge or release under conditions other than dishonorable at that time except for the intervening enlistment or reenlistment.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes Subject served for more than eight years without any disciplinary actions and was promoted to SSGT (E-6). He completed more than the four years of service for which he initially enlisted and had he not reenlisted early, he would have been honorably released when this enlistment expired. It is the Board's understanding that Petitioner's husband would qualify for veterans benefits since he completed his first period of service. Although Petitioner could appeal the DVA's decision, the Board believes it would be in the interest of justice to resolve the issue now by correcting the record to show that her husband's first period service was terminated by a complete and unconditional separation. This may be accomplished by changing the reason for separation of the first discharge, on 22 August 1974, to expiration of enlistment.

RECOMMENDATION:

a. That Subject's naval record be corrected to show that he was issued an honorable discharge on 22 August 1974 by reason of expiration of enlistment vice convenience of the government as now shown on DD Form 214. This should include the issuance of a new DD Form 214.

b. That no further relief be granted.

c. That a copy of this Report of Proceedings be filed in Subject's naval record.

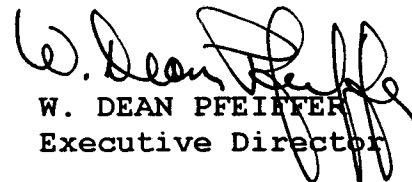
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director